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COMMISSIONERS

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GARY PIERCE
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PAUL NEWMAN
BOB STUMP

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AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF RIGBY WATER COMPANY FOR
APPROVAL OF TRANSFER OF ASSETS
AND CONDITIONAL CANCELLATION OF
ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY

DOCKET NO. W-01808A-10-0390

**RIGBY WATER COMPANY'S
NOTICE OF FILING LATE-FILED
EXHIBITS**

Applicant Rigby Water Company, as requested by Administrative Law Judge Harpring during the hearing held April 14, 2011, hereby provides notice of the filing of late-filed exhibits A-5, the settlement agreement between Rigby Water Company and the City of Avondale, and A-6, the Declaration of Fred T. Wilkinson concerning the disposition of customer security deposits held by Rigby Water Company.

RESPECTFULLY SUBMITTED this 22nd day of April, 2011.

BRYAN CAVE LLP

Arizona Corporation Commission

DOCKETED

APR 22 2011

DOCKETED BY

By

Steven A. Hirsch, #006360

Stanley B. Lutz, #021195

Two N. Central Avenue, Suite 2200

Phoenix, AZ 85004-4406

Attorneys for Rigby Water Company

1 ORIGINAL and 13 copies of the foregoing
2 filed this 22nd day of April, 2011 with:

3 Docket Control Division
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 COPIES of the foregoing hand-delivered
8 this 22nd day of April, 2011, to:

9 Lyn A. Farmer, Esq.
10 Chief Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
13 1200 W. Washington Street
14 Phoenix, AZ 85007

15 Steve Olea
16 Director, Utilities Division
17 Arizona Corporation Commission
18 1200 W. Washington Street
19 Phoenix, AZ 85007

20 Janice Alward, Chief Counsel
21 Legal Division
22 Arizona Corporation Commission
23 1200 W. Washington Street
24 Phoenix, AZ 85007

25 and

26 COPY of the foregoing mailed
27 this 22nd day of
28 April, 2011, to:

Craig A. Marks, Esq.
Craig A. Marks, PLC
10645 North Tatum Boulevard
Suite 200-676
Phoenix, Arizona 85028

J. Daine Williams

Exhibit

A-5

SETTLEMENT AGREEMENT
TO IMPLEMENT SETTLEMENT
OF EMINENT DOMAIN ACTION AND TO
COMPLETE CITY OF AVONDALE'S ACQUISITION OF
RIGBY WATER COMPANY'S UTILITY SYSTEM,
FACILITIES AND PROPERTIES.

THIS SETTLEMENT AGREEMENT is entered into as of September 7, 2010, by and between the City of Avondale and Rigby Water Company, to settle the pending eminent domain action referenced below, to implement the Rule 80(d) Mediation Settlement Agreement, and thereby, subject to approval by the Arizona Corporation Commission ("ACC"), to complete acquisition by the City of Avondale of the water utility system, facilities, properties and other assets of Rigby Water Company's water utility system, including Rigby Water Company's Certificate of Convenience and Necessity issued by the ACC and fee title to well-sites and easements in which Rigby Water Company holds a long-term leasehold or other possessory interest, all as more particularly described in the First Amended Complaint in Condemnation and in this Settlement Agreement.

1. **DEFINITIONS.** In this Settlement Agreement, the following terms shall have the definitions described below, unless the context clearly requires otherwise, and are intended to be congruent with the conventions used in the pleadings and the Stipulation for Entry of Final Judgment in Condemnation to be filed in the Condemnation Action and under Arizona statutes and law on eminent domain and utility regulation, as applicable.

1.1 "ACC" refers to the Arizona Corporation Commission in the exercise of its constitutional and statutory authority to regulate utility service in this State provided by public service corporations.

1.2 "ACC Approval" as it relates to the settlement of the Eminent Domain Action reflected in this Settlement Agreement refers to approval by the ACC, in the exercise of limited authority under A.R.S. §40-285, of the disposition by Rigby of the Subject Water Facilities pursuant to Avondale's exercise of the power of eminent domain to acquire the Subject Water Facilities in the Eminent Domain Action and extinguishment of Rigby's CC&N. This Agreement is not intended to grant or consent to the ACC any right or authority to review and approve the settlement and its terms beyond whatever limited authority is granted to the ACC under A.R.S. §40-285.

1.3 "Agreement" or "Settlement Agreement" refers to this Settlement Agreement, but also includes the terms, conditions and provisions of the Rule 80(d) Mediation Settlement Agreement.

1.4 "Annual Eligible Unit Count" refers to the total number of Eligible Units existing within the Certificated Area on December 31 of each year during the Future Payment Period, minus the total number of Eligible Units existing within the Certificated Area on the immediately preceding December 31.

1.5 "Avondale" or "City" refers to the City of Avondale, an Arizona municipal corporation, and the Plaintiff in the Eminent Domain Action referred to herein.

1.6 "Base Unit Count" refers to the "Current Unit Count" plus Seven Hundred (700) additional new Dwelling Units for which a certificate of occupancy ("C of O") has been issued by the appropriate building officials within the Certificated Area, whether the C of O is issued for an individual Dwelling Unit or for a multi-family building containing multiple Dwelling Units that is the subject of a single C of O.

1.7 "Certificate of Convenience and Necessity", "CCN" or "CC&N" refer to the Certificate of Convenience and Necessity issued by the ACC, as amended through the date of Summons in the Condemnation Action, under Water Utility No. W-01808A, held by Rigby for the provision of public water utility service within its Certificated Area.

1.8 "Certificated Area", CCN or CC&N used in a geographical reference, and "Service Area" refer to the entire geographical area for which Rigby holds the CC&N, which is understood to be located within all or a part of Section 25, the Southeast Quarter (SE1/4) Section 26, the Northeast Quarter (NE1/4) Section 35, the North Half (N1/2) of Section 36, Township 1 North (T1N), Range 1 West (R1W) and the North Three Quarters (N3/4) Section 30, and the North Half (N1/2) Section 31, Township 1 North (T1N), Range 1 East (R1E), of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona. The Certificated Area includes the Rigby system or division and the Holly Acres system or division, both of which constitute Rigby's system and utility operations. For purposes of application of the Future Payments provisions of this Agreement, "Certificated Area" includes the geographical area of the former Rigby CC&N after it is deleted by the ACC.

1.9 "CPI" refers to the All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average, 1982-84 = 100 as reported by the United States Department of Labor, Bureau of Labor Statistics, or if not reported,

then such similar index of economic change to broad-based consumer prices in United States Dollars reported by a U.S. governmental or financial source that is generally recognized as authoritative in financial and economic analysis.

1.10 "Current Unit Count" is the actual number of Dwelling Units within the Certificated Area for which (1) public water utility service has been connected or (2) a C of O has been issued by the appropriate building officials, as of the close of business hours on December 31, 2010.

1.11 "Dains Complaint" refers to a Complaint (No. W-01808A-09-0137) filed with the ACC by Charles J. Dains against Rigby.

1.12 "Dwelling Unit" or "Unit" shall mean single dwelling units and individual dwelling units within multi-family residential buildings, but does not include commercial or industrial units, buildings or occupancies. "Dwelling" is an enclosed space providing complete, independent living facilities for a family including permanent provisions for living, sleeping, eating, cooking and sanitation.

1.13 "Eligible Unit" means each Dwelling Unit for which a C of O is issued within the Certificated Area in excess of the Base Unit Count, whether the C of O is issued for an individual Dwelling Unit or for a multi-family building containing multiple Dwelling Units that is the subject of a single C of O.

1.14 "Eminent Domain Action", "Condemnation Action" or "the Condemnation" refer to that action filed and pending in Maricopa County Superior Court, under cause number CV2009-003060 and the acquisition under the power of eminent domain as described in the First Amended Complaint.

1.15 "Future Payment Amount" on an annual basis shall be the Per Unit Payment Amount times the Annual Eligible Unit Count. The Per Unit Payment Amount applicable to the initial year shall be One Thousand Two Hundred Dollars (\$1,200.00). Starting with the second year of the Future Payment Period and continuing annually for the remaining years in the Future Payment Period, the Per Unit Payment Amount on an annual basis shall be adjusted, if applicable, on January 1 from the previous year's Per Unit Payment Amount by applying the percentage change of the annual CPI for the preceding year (measured from November to November) to the Per Unit Payment Amount. In no event shall the Per Unit Payment Amount be adjusted below a floor amount of One Thousand Two Hundred Dollars (\$1,200.00).

1.16 "Future Payment Period" is a ten calendar year period beginning on January 1, 2011 and ending on December 31, 2020.

1.17 "Lump Sum Payment" refers to a cash payment to be made by Avondale to Rigby as agreed in the Rule 80(d) Settlement Agreement and under the Final Judgment in Condemnation in the amount of TWO MILLION FIVE HUNDRED SIXTY THOUSAND DOLLARS (\$2,560,000.00).

1.18 "Parties" refers to the parties to this Settlement Agreement, i.e., Avondale and Rigby as defined herein and as listed as a party in the Eminent Domain Action.

1.19 "Perry" refers to the Perry Trust identified in this paragraph and to William W. Perry and Nancy M. Perry, as Co-Trustees of the William W. Perry and Nancy M. Perry Living Trust dated May 20, 1999 by mesne instruments of record, including the instrument which was recorded at Document No. 1999-0578426 in the records of Maricopa County, Arizona ("Perry Trust").

1.20 "Perry Property" refers to that parcel of real property identified by the Maricopa County Assessor as APN 500-87-004A.

1.21 "Perry Well-Site" refers to an undeveloped well-site on the Perry Property and the terms and provisions of that certain Well-Site Agreement recorded in Docket 12931, Page 30, Maricopa County Recorder's Office, also identified as Parcel 2 on the legal description to the Final Judgment in Condemnation and a portion of APN 500-87-004A.

1.22 "Repayment Agreement" refers to that Water Facilities Extension Agreement entered into by and between Rigby and Terra Mobile Ranchettes Estates on October 1, 1998 (**Attachment D**), and paragraph 16 of said agreement providing for repayment of a formulaic amount of the cost of the water facilities as an aid in advance of construction over a twenty (20) year period ("Repayment Period").

1.23 "Rigby Water Company" or "Rigby" refers to Rigby Water Company, an Arizona corporation and a regulated public service corporation and water utility (ACC Utility No. W-01808A). It also includes, as to any claim for just compensation, actual and consequential damages, claims asserted or which might have been claimed or asserted in the Eminent Domain Action by (1) First National Management, Inc. ("FNM"), an Arizona corporation, former sole owner of Rigby, and contractual operators and managers of the Rigby system, (2) Sequoia Industries, Ltd. ("Sequoia"), the current parent company of Rigby and FNM, and (3) all shareholders or other owners, directors, officers, principals, employees, agents, representatives, and all other persons or entities who act or

may act on behalf of or claim any connection to the Eminent Domain Action by, for, or on behalf of the companies identified in this section 1.23.

1.24 "Rule 80(d) Mediation Settlement Agreement", "Rule 80(d) Settlement Agreement", and "Rule 80(d) Agreement" refer to the conditional settlement agreement reached between the Parties during the mediation held in the Eminent Domain Action on August 9, 2010, and the single-page agreement signed by the Parties' principals included as **Attachment A** to this Agreement.

1.25 "Subject Water Facilities" includes all plant, system, assets and other items identified in the First Amended Complaint as "Subject Water Facilities" and as items or rights being acquired by Avondale in the Condemnation Action from Rigby, but does not include cash and cash equivalents, bank accounts and security deposit boxes of Rigby, or any rights that accrue or will accrue to Rigby under this Agreement and the Final Judgment in Condemnation. The Final Judgment in Condemnation and Final Order of Condemnation will include the acquisition by condemnation of the Subject Water Facilities, which includes properties described in Exhibit A to and within the meaning of the First Amended Complaint attached hereto as **Attachment B** and a well-site on the Perry Property. The well-site on the Perry Property has interests asserted by both Rigby and Perry, but the Perry claims for acquisition of that well-site shall not be included within the use of the term Subject Water Facilities for any purposes of settling the claims by Rigby for compensation, as the City has separately settled Perry's claims. The Subject Water Facilities include all intangible assets of Rigby relating to the Subject Water Facilities and the Rigby Certificated Area, including but not limited to any claim for going concern value, growth and development potential, lost future earnings, the Certificate of Convenience and Necessity and Rigby's Certificated Area.

1.26 "Tax Claim" refers to a claim or assertion of an unpaid property tax and other taxes of any kind (current taxes due and any delinquent taxes, tax liens, tax levies, certificates of purchase and all other assertions of a tax obligation by any taxing jurisdiction or agency), that is not apparent as being facially invalid or unenforceable, on or that may be enforced or collected against or from the Subject Water Facilities or proceeds of this acquisition and settlement that are the legal obligation of Rigby. A Tax Claim does not include any taxes, liens, levies, certificates of purchase or other assertions of a tax obligation that may have been assessed or asserted against Perry's interest in the Perry Well-Site.

1.27 "Transfer Date" refers to the date agreed to by the Parties on which possession and operation of the Subject Water Facilities shall be transitioned from Rigby to Avondale.

2. TERMS.

2.1 Settlement documents and Interpretation.

2.1.1 The settlement terms and conditions are contained in the Settlement Agreement, comprised of the several settlement documents identified in Section 1.3 above.

2.1.2 This Settlement Agreement also is intended by the Parties to implement the Rule 80(d) Mediation Settlement Agreement (**Attachment A**) and shall be interpreted as may be necessary with that purpose in mind.

2.1.3 If there is any question or dispute about the Parties' intentions or the meaning of the terms of the settlement set forth in the Rule 80(d) Agreement (**Attachment A**) or of this Settlement Agreement as it implements the provisions of the Rule 80(d) Agreement, a binding resolution to the issue will be made by the mediator, Hon. Rebecca Albrecht, subject to her willingness and availability to do so.

2.2 Conditioned upon Required Governmental Approvals.

2.2.1 The settlement embodied in the Settlement Agreement was reviewed and approved by the Avondale City Council on September 7, 2010, with authorization of the City Manager and other City Officials to enter into an acceptable settlement agreement to effectuate the Council's approval of the settlement (the "City Council Approval"). If the settlement fails to be fully effected by reason of any contingency provided for herein, the City shall incur no liability to or claim by Rigby, including as to any award of attorneys' fees, expert fees, litigation expenses, or costs of any kind by reason of such disapproval of the proposed and conditional settlement. Nothing in the foregoing provision shall affect the application of A.R.S. §12-1129 to the Parties, if it applies to the circumstances at hand.

2.2.2. Rigby and the City shall execute this Settlement Agreement subject to the conditions set forth in this Agreement, as authorized and provided in the City Council Approval. Upon execution of this Agreement by the City Manager for Avondale and by an authorized corporate officer for Rigby, the Settlement Agreement shall become binding upon the Parties, subject to ACC Approval. Rigby shall faithfully and diligently prosecute an application before the ACC requesting ACC Approval including the extinguishment of the Rigby CC&N as provided in this Settlement Agreement. The City shall reasonably cooperate with Rigby in the prosecution of that application, including but not limited to filing a position statement with the ACC in support of the application and

expressing support for the ACC Approval at any hearings on the application held under ACC jurisdiction by an administrative law judge, hearing officer, or the Commission. Avondale may, but shall not be required, to intervene formally in the ACC proceedings for ACC Approval or extinguishment of Rigby's CC&N or take any other action that the City believes may have the effect of subjecting the City to utility regulation by the ACC or may broaden the limited authority of the ACC beyond that of the ACC Approval.

2.3 Actions upon approval.

2.3.1 The Parties shall forthwith execute and file with the Court in the Eminent Domain Action a Stipulation for Entry of Final Judgment in Condemnation in a form that conforms to the terms and provisions of this Agreement. A proposed form of Final Judgment in Condemnation shall be approved by the Parties and lodged with the Court for entry. The stipulation shall also include appropriate disclaimers of interest or execution of the stipulation by the taxing authorities if such disclaimers or stipulations have been provided, pursuant to Sec. 2.6.6 below.

2.3.2 Payments of the Lump Sum Payment and of any of the Future Payment Amounts shall bear statutory interest commencing fourteen (14) days from the date such payments are due, calculated as provided in Rule 6(a), *Ariz.R.Civ.P.*

2.3.3 The Parties shall agree on a Transfer Date. The Parties shall jointly read all customer meters and agree upon all meter readings on the Transfer Date. Rigby will bill all customers for water served by Rigby prior to the joint meter reading on the Transfer Date. The City will bill customers for all water served by the City following the joint meter reading on the Transfer Date. The Parties shall cooperate with respect to payments made in the ordinary course by any third party so that Rigby and the City each receive the third party payments appropriately payable to them under this Agreement.

2.4 Lump Sum Payment, Satisfaction of Judgment. Subject to resolution of or provision for any Tax Claims as provided in Sec. 2.6.6, the City shall timely pay the Lump Sum Payment to Rigby upon entry of the Final Judgment in Condemnation by the Court and entry of an order granting ACC Approval. Upon confirmation of the receipt of such payment, Rigby shall promptly provide a fully executed Receipt and Partial Satisfaction of Judgment in the form attached as **Attachment C** to counsel for the City for filing, expressly excluding from the terms of such Partial Satisfaction of Judgment any Future Payment Amounts. The stipulation, judgment and Receipt and Partial Satisfaction of Judgment shall provide for entry of the Final Order of Condemnation upon the Partial Satisfaction

of Judgment and the Future Payments provided for in Sec. 2.5 below shall not delay entry and recording of the Final Order of Condemnation. The retained jurisdiction of the Court may be used to remedy any failure of the City to make any of the Future Payments due to Rigby, but shall not include any revision or vacating of the Final Order of Condemnation.

2.5 Future Payments.

2.5.1 The City shall calculate and provide to Rigby the Current Unit Count and Base Unit Count by January 31, 2011. Rigby shall review and communicate its approval or exception of the Current Unit Count and Base Unit Count within 28 days of transmittal of the City's numbers to it. If Rigby does not communicate an exception by March 1, 2011 to the City's calculations of the Current Unit Count and the Base Unit Count, the City's calculations shall be deemed accepted by Rigby. The Parties shall cooperate in resolving any dispute over the Unit Counts. The Parties may utilize retained jurisdiction of the Court and Mediator Albrecht to resolve the dispute if they are unable to do so.

2.5.2 By January 31 of each succeeding year of the Future Payment Period, the City shall provide to Rigby its calculation of the Annual Eligible Unit Count, if any, for the preceding calendar year, together with information and documentation that provides the basis of such calculation, and the City shall simultaneously tender payment to Rigby of the corresponding annual Future Payment Amount based on such calculation and the City's calculation of the Per Unit Payment Amount as may have been adjusted by the CPI as provided above.

2.5.3 Cashing or deposit of the tendered payment by Rigby shall be deemed to be Rigby's approval of the Annual Eligible Unit Count, Per Unit Payment Amount and Future Payment Amount as determined by the City for the previous calendar year. Rigby shall have the right to communicate any exception (including the basis and particulars of its exception) to the City's determinations of such calculations and amounts on or before March 1 of the subject year, without cashing or depositing the payment tendered by the City as to which Rigby has taken exception. If Rigby does not communicate an exception by March 1 of that year, the City's calculations shall be deemed accepted by Rigby. The Parties shall cooperate in resolving any dispute over the Future Payment Amount including any CPI adjustment. The Parties may utilize retained jurisdiction of the Court or Mediator Albrecht to resolve the dispute if they are unable to do so.

2.5.4 Unless amended and otherwise agreed to by the Parties in writing pursuant to Sec. 3.5 below, the Future Payment Period shall not be extended for any reason. Upon expiration of the Future Payment Period, Rigby shall provide a fully executed Final Satisfaction of Judgment to the City for filing

with the Court and recordation, at the City's discretion, which shall signify the culmination of performance under the Final Judgment in Condemnation and termination of the Condemnation Action in all respects.

2.5.5 Rigby shall not, by virtue of the Judgment and Future Performance by the City under the Judgment, have a lien against the Subject Water Facilities or any other City properties or assets and shall not have a covenant or pledge of City water or other utility revenues or general funds for payment of the Future Payment Amounts, but shall be entitled to enforce the Future Performance obligations of the City and the Settlement Agreement under the Court's continuing jurisdiction retained as provided in the Stipulation for Entry of Final Judgment in Condemnation and the Final Judgment in Condemnation. The City shall not be required to post or maintain a bond, cash deposit or other security for payment by the City of the Future Payment Amounts. Any interest Rigby may be deemed to have as an obligation of the City shall be automatically subordinated to rights, pledges of revenues, liens and other interests of bondholders and others from whom the City may have secured or will in the future secure capital or financing during the Future Payment Period. Notwithstanding the foregoing, Rigby Water expressly retains all of its rights under this Settlement Agreement and the Final Judgment in Condemnation once entered, including but not limited to the right to seek enforcement of same in court.

2.6 Rigby obligations and regulatory matters.

2.6.1 It shall remain Rigby's sole obligation to satisfy the Repayment Agreement (**Attachment D**). The City shall be held harmless by Rigby as to such obligation. The City will cooperate with Rigby by providing reasonable information, utilizing good faith efforts to provide its best available accounting of revenues that are the subject of the Repayment Agreement, as required for Rigby to make annual payments on the Repayment Agreement for the remaining portion of the 20-year term.

2.6.2 All matters involving the hearing, determination and resolution of the Dains Complaint shall remain the sole responsibility of Rigby. The City shall be held harmless by Rigby as to such complaint and all regulatory action by the ACC with respect to the Dains Complaint and all related matters.

2.6.3 Rigby and FNM shall have sole responsibility for their employees and any severance or other compensation issues that may arise by reason of the acquisition and shall hold the City harmless from all such claims and obligations.

2.6.4 The City has determined that it will accept transfer of water customer meter deposits from Rigby and shall hold Rigby harmless from any customer claims for meter deposits placed with Rigby that are actually turned over to the City with the pertinent account records.

2.6.5 Rigby shall be entitled to receive all accounts receivable for water deliveries made by Rigby through the joint meter reading on the Transfer Date, pursuant to Sec. 2.3.3. The City shall be entitled to receive all payments for water deliveries made after the joint meter reading on the Transfer Date.

2.6.6 The Parties shall jointly determine whether there exists any Tax Claims upon execution of this Agreement or as soon thereafter as is practicable. If any such claims exist, Rigby shall take all steps necessary to effect removal and/or satisfaction of any such claims, whether by assertion, levy, lien and administrative or judicial action, prior to the Transfer Date. Filing of an unconditional Disclaimer of Interest by the taxing jurisdiction, or stipulation by the taxing jurisdiction for entry of a Final Judgment in Condemnation in a form that (A) does not require payment of claimed unpaid Tax Claims to the taxing jurisdiction, or (B) requires payment from the Lump Sum Payment of a specified amount in satisfaction of any unpaid Tax Claims which amount and payment details are stipulated to by the Parties and taxing jurisdiction, satisfy the requirements of this Sec. 2.6.6 as to Tax Claims by the referenced taxing jurisdictions. In the event that Rigby does not effect removal and/or satisfaction of one or more Tax Claims prior to the date on which the Lump Sum Payment is otherwise due to be paid, the City is authorized to withhold an amount from the Lump Sum Payment that the City determines in good faith is reasonably necessary and prudent to ensure that all outstanding Tax Claims can be satisfied in full. Any dispute over the amount to be withheld from the Lump Sum Payment for this purpose shall be resolved between the Parties, if possible, or through mediation of the dispute by the mediator, Hon. Rebecca Albrecht, subject to her willingness and availability to do so.

2.6.7 Rigby shall hold the City harmless against all assertions, liens or attempts to collect on Tax Claims against Avondale or the Subject Water Facilities and all revenues the City receives from operating the Subject Water Facilities, and shall reimburse the City its reasonable attorneys' fees, costs and expenses, as well as damages and losses proven by the City, as a result of all Tax Claims. In any challenge, administrative or judicial action of any kind that Rigby may choose to bring with respect to a Tax Claim or that a person seeking to enforce the Tax Claim brings against Rigby, the City, the Subject Water Facilities, and/or proceeds thereof, Rigby shall not name the City as a party (unless compelled to do so by a court or hearing officer) or take any other affirmative

action to cause the City to be brought into or subjected to the action and shall fulfill the hold harmless requirements of this section.

2.7 Other Performance and Cooperation for Take-over of Operations.

2.7.1 Rigby shall reasonably cooperate with the City with regard to the transfer of Rigby's system to the City, including but not limited to providing access to Rigby's and FNM's knowledgeable water operators and maintenance personnel to assist the City's water operations personnel in becoming familiar with the system and its operations.

2.7.2 Without limiting the generality of the foregoing, Rigby shall, promptly upon entry of the Final Judgment in Condemnation, provide the documents, information and other assistance and information outlined in **Attachment E** (to the extent that such documents and information exists) and identify the bates numbers for any such documents that have already been provided to the City by Rigby in the Eminent Domain Action or in Rigby's cooperation that has already been provided in advance of signing this Agreement. Nothing in this provision shall obligate Rigby or FNM, or their employees or agents, to perform additional research or investigation or to undertake additional studies in order to provide the City with such information if it does not already exist in Rigby's possession.

2.7.3 If the City were to decide that it needed active assistance of the utility's water operators or other employees on an interim basis during the transition of operation of the Rigby water system, Rigby and FNM agree to provide that assistance for a fee to be negotiated between the Parties. In that event, the employees so provided by Rigby and/or FNM would remain their employees and all burdens and obligations of the employer would be borne by Rigby and/or FNM, who would remain an independent contractor of the City.

2.8 Miscellaneous charges. The provisions of sections 2.5, 2.6 and 2.7 of this Settlement Agreement contemplate that the Parties will provide reasonable amounts of information and documentation to each other to allow the purposes of the Agreement and the acquisition to be completed, even over the next 9 and 10 years as to some terms, without charge. This cooperation shall include turning over records, as-builts and other documents (to the extent they exist) to accomplish a transfer of system operations with a minimum of disruption to the water customers and to the orderly processes required. The Parties shall cooperate in resolving any dispute over the documentation and other information and assistance needed. The Parties may utilize retained jurisdiction of the Court and Mediator Albrecht to resolve the dispute if they are unable to do so.

3. Other terms.

3.1. In dealing with each other on the settlement and the settlement documents, including this Agreement, the Parties have each been represented by experienced and competent legal counsel. This Agreement shall be construed evenly according to the fair meaning of its terms and neither for nor against either party, regardless of which party may have drafted portions or even all of the Settlement Agreement.

3.2 This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the State of Arizona. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of Arizona, without regard to conflicts of laws principles. In the event of a judicial action under the retained jurisdiction of the Court concerning the enforcement of this Agreement, the prevailing or successful party shall be entitled to its reasonable attorney fees, costs and expenses.

3.3 The City may cancel this Agreement, pursuant to A.R.S. §38-511, without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

3.4 Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) hand-delivered to the party at the address set forth below, (b) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (c) given to a recognized and reputable overnight delivery service to the address set forth below or (d) delivered by facsimile transmission to the number set forth below:

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Facsimile: (623) 333-0100
Attn: Charles P. McClendon, City Manager

With copy to: GUST ROSENFELD, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Facsimile: (602) 254-4878
Attn: Andrew J. McGuire, Esq.

If to Rigby: Rigby Water Company
P.O. Box 1020
Apache Junction, AZ 85217-1020
Facsimile: 480-677-6082
Attn: Fred T. Wilkinson, President and Judy Lopez,
Secretary

With copy to: BRYAN CAVE LLP
Two North Central Ave., Suite 2200
Phoenix, Arizona 85004-4406
Facsimile: (602) 364-7070
Attn: Steven A. Hirsch, Esq

or at such other address, and to the attention of such other person or officer, as any party may later designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (a) when delivered to the party, (b) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (c) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (d) when received by facsimile transmission during the normal business hours of the recipient. Provision of a copy of a notice under this Agreement to a party's counsel shall not constitute notice to the party itself unless the party separately acknowledges acceptance of such notice in writing.

3.5 This Agreement represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying

out the provisions of this Agreement. The Parties agree to execute such other documents and instruments as are reasonably necessary to carry out this settlement and acquisition and Settlement Agreement terms. This Agreement may only be amended in a writing signed by both Parties.

3.6 There are no third-party beneficiaries to this Settlement Agreement. This Settlement Agreement will be binding upon and inure solely to the benefit of the Parties and their successors and assigns, and nothing herein, express or implied, is intended to or will confer upon any other person or party any legal or equitable right, benefit, or remedy of any nature whatsoever.

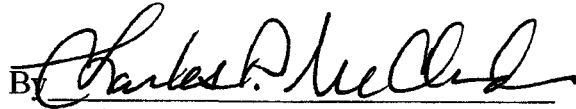
3.7 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon and all of which shall together constitute one and the same instrument. Each of the Parties shall be provided with a fully executed original of this Agreement. Signatures of the Parties may be submitted via facsimile or other commercially acceptable electronic means (including but not limited to "pdf") shall be deemed to be original signatures and fully enforceable.

SIGNATURES APPEAR ON NEXT PAGE.

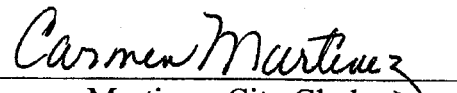
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EFFECTIVE AS OF SEPTEMBER 7, 2010.

CITY OF AVONDALE

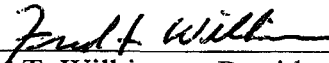
By 
Charles P. McClendon, City Manager

ATTEST:


Carmen Martinez, City Clerk

EFFECTIVE AS OF SEPTEMBER 7, 2010.

RIGBY WATER COMPANY

By 
Fred T. Wilkinson, President

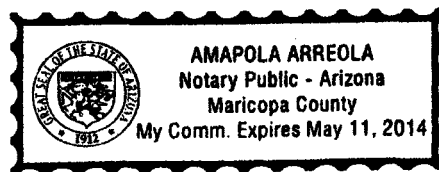
A

STATE OF ARIZONA)
) ss.
County of Maricopa)

ACKNOWLEDGED before the undersigned Notary Public this 19th day of January 12, 2010, by Charles P. McClendon, City Manager of the City of Avondale, for and on behalf of the municipal corporation.

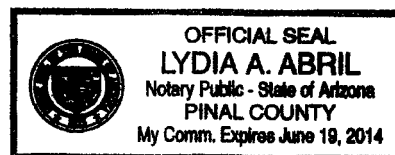

NOTARY PUBLIC

STATE OF ARIZONA)
County of Maricopa) ss.



ACKNOWLEDGED before the undersigned Notary Public this 9th day of December, 2010, by Fred T. Wilkinson, President of Rigby Water Company, for and on behalf of the corporation.

Lydia A. Abil
NOTARY PUBLIC



INDEX OF ATTACHMENTS

- A.** Rule 80(d) Mediation Settlement Agreement
- B.** First Amended Complaint – Subject Water Facilities identification and general description
- C.** Receipt and Partial Satisfaction of Judgment (Lump Sum Payment)
- D.** Repayment Agreement: Rigby Water Company and Tierra Mobile Ranchettes Estates, dated October 1, 1998
- E.** Information, documents, assistance from Rigby to Avondale

City of Avondale v. Rigby Water Co.
Maricopa County Superior Court No. Cv2009-003060

SETTLEMENT AGREEMENT

ATTACHMENT A

MATTER CV 2009-003060

The parties to this agreement are City of Avondale and Rigby Water Company.

The Parties agree as resolution of the condemnation action, City of Avondale will pay to Rigby Water Company (RWC) as follows:

1. \$2,560,000.000 (Two million five hundred sixty thousand dollars)
2. Beginning 1-1-2011 the sum of \$1200 per new residential water unit within the RWC CC&N issued for ten years. Residential unit includes single and multi-family units but does not include commercial or industrial or other type units.
3. The \$1200 will modify each year on the first of the year based on the CPI.
4. The right to receive \$1200 will arise upon the issuance of the certificate of occupancy.
5. The amount will accrue and be paid annually with a closing date of 12-31 of the year.
6. A reconciliation will be provided to RWC providing information about the number of units for which the payment is made ^{arises}
7. The right to \$1200 per unit ^{new} after 700 units w/in the RWC CC&N have issued.

The Agreement is subject to approval by the Avondale City Council. The parties will draft a final full document reflecting these agreements. Any disagreement about the terms will be submitted to Rebecca Albrecht for binding resolution.

Fred T. Wilkinson
RIGBY WATER CO. BY FRED T. WILKINSON, PRESIDENT

Don W. Lutz
Rebecca Albrecht

August 9, 2010

City of Avondale v. Rigby Water Co.
Maricopa County Superior Court No. Cv2009-003060

SETTLEMENT AGREEMENT

ATTACHMENT B

1 **GUST ROSENFELD P.L.C.**
201 E. Washington, Suite 800
2 Phoenix, AZ 85004-2327
(602) 257-7422
3 David A. Pennartz - 006429
Andrew J. McGuire - 016653
4 Eric McGlothlin - 026060

5 **Attorneys for City of Avondale**

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF MARICOPA**

8 **CITY OF AVONDALE**, an Arizona
municipal corporation,
9

10 **Plaintiff,**

11 **vs.**

12 **RIGBY WATER COMPANY**, an Arizona
corporation, aka **RIGBY WATER**
13 **COMPANY, INC.**; **HELEN G. RIGBY**, a
single woman and widow of **WILLIAM**
14 **FREEMAN RIGBY**; unknown heirs and
devisees of **WILLIAM F. RIGBY**;
15 **SENAIDA BANUELOS**, a single person;
the **SPOUSE** of **OFELIA BANUELOS**, if
16 other than **Senaída Banuelos** on May 9,
1984; **TERESA CARRANZA**; **ASA R.**
17 **ANDREWS** and **IVA OPAL ANDREWS**,
husband and wife; unknown heirs and
18 devisees of **ASA R. ANDREWS** or **IVA**
OPAL ANDREWS, or both; unknown
19 successors in interest to **ASA R.**
ANDREWS and **IVA OPAL ANDREWS**
20 as fee owners and lessors of the property
described and all rights, obligations and
21 privileges held under that certain Well-Site
Agreement recorded in Docket 12931, Page
30, Maricopa County Recorder's Office;
22 **ARTHUR C. TOBIN**; unknown heirs and
devisees of **ARTHUR C. TOBIN**; unknown
23 successors in interest to **ARTHUR C.**
TOBIN as fee owner and grantor of
24 easement across the property described in
that conveyance of easement recorded as
25 Document No. 1996-0847690, Maricopa
County Recorder's Office; **STATE OF**
26 **ARIZONA** by the **ARIZONA DEPARTMENT**

COPY

MAY 14 2009



MICHAEL K. JAMES, CLERK
J. GARCIA
DEPUTY CLERK

No. CV2009-003060

**FIRST AMENDED COMPLAINT IN
CONDEMNATION (EMINENT
DOMAIN)**

Includes APN: APN 500-68-008-G; PART
APN 500-87-004A; PART APN 101-43-001;
APN 101-43-009A; PART APN 500-69-076;
PART APN 101-43-009-B

CASE PREFERENCE: A.R.S. §12-1121;
A.R.S. §9-518(L)

(Assigned to Honorable A. Craig Blakey, II)

1 OF REVENUE, as to any unpaid taxes on
2 centrally-valued utility property; COUNTY OF
3 MARICOPA, as to any unpaid real property
4 taxes; PARTY(IES) IN POSSESSION OF AN
5 UNRECORDED INTEREST; UNKNOWN
6 DEFENDANTS; HEIRS AND DEVISEES OF
7 THE ABOVE-NAMED DEFENDANTS, IF
8 DECEASED,

9
10 Defendants.

11
12 Plaintiff, City of Avondale ("Plaintiff," "City" or "Avondale"), by and
13 through its attorneys undersigned, for its cause of action alleges:

14
15 I

16 Plaintiff is a municipal corporation located within Maricopa County, Arizona,
17 duly organized and existing under the laws of the State of Arizona, and authorized by
18 the applicable provisions of the Arizona Revised Statutes to acquire by condemnation
19 the water utility plant, system, property, and other facilities utilized or which may be
20 utilized to provide water service to the public, as well as the Certificate(s) of
21 Convenience and Necessity, franchise(s), intangible assets and rights, and all other
22 assets of any type or nature owned by and/or associated with the utility operations of the
23 Rigby Water Company, and other items described below and subject to the exclusions
24 described below for the public purposes and uses specified below. Plaintiff's authority
25 to acquire the subject utility facilities and rights through this action is derived from the
26 applicable provisions of A.R.S. §§12-1111, *et seq.*, 9-511, *et seq.*, including 9-515, 9-
516 and 9-518, and/or 9-521, *et seq.*, including 9-522(A)(1) and 9-537.

27
28 II

29 This court has jurisdiction over this petition pursuant to one or more of the
30 statutes referred to in paragraph I.

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III

The property and property interests sought to be acquired by this action are all of the water utility plant, system, business, real and personal property and interests in property, and other facilities utilized or which may be utilized to provide water service to the public, as well as the Certificate(s) of Convenience and Necessity, franchise(s), intangible assets and rights, and all other assets of any type or nature owned by and/or associated in any way with the utility operations of the Rigby Water Company, located within and without the City, in Maricopa County, Arizona, including but not limited to those facilities, pumps, wells, waterlines, meters, personal property and/or other equipment, properties and rights used or useful to provide water service in the Rigby system or division and Holly Acres system or division both of the Rigby Water Company, including well sites, easements, leaseholds and other interests in real property described in Exhibit A attached hereto and incorporated herein, and all equipment and facilities thereon (collectively the "Subject Water Facilities"). In addition to the leasehold interest, easements, rights, obligations and privileges of Rigby Water Company, under that certain Well-Site Agreement recorded in Docket 12931, Page 30, Maricopa County Recorder's Office, Plaintiff intends by this action to acquire fee simple absolute title to the property described therein (aka Parcel 2 on attached Exhibit A), free and clear of any retained interests, claims, rights, obligations, and encumbrances of any nature for the sole use and benefit of Plaintiff and fee simple absolute title to said parcel is included within the "Subject Water Facilities" as described above.

IV

The Plaintiff does not request condemnation of Defendant Rigby Water Company's non-utility property, equipment or furnishings, general plant assets, or working funds, receivables, other current assets or stock. The City does not in this

1 action assume any financial obligations or liabilities of Rigby Water Company. The
2 acquisition of the Subject Water Facilities provided in this First Amended Complaint in
3 Condemnation shall be free and clear of any such financial obligations or liabilities of
4 Rigby Water Company and of any rights, claims, liens, encumbrances or other interests
5 of any nature held by any person or entity named as Defendants above.

6 V

7 The Subject Water Facilities are believed to be located within all or a part of
8 Section 25, the Southeast Quarter (SE1/4) Section 26, the Northeast Quarter (NE1/4)
9 Section 35, the North Half (N1/2) of Section 36, Township 1 North (T1N), Range 1
10 West (R1W) and the North Three Quarters (N3/4) Section 30, and the North Half
11 (N1/2) Section 31, Township 1 North (T1N), Range 1 East (R1E), of the Gila and Salt
12 River Base and Meridian, in Maricopa County, Arizona.

13 VI

14 Plaintiff, through its City Council, duly enacted Ordinance No. 1336-1208, dated
15 December 1, 2008, which authorizes and directs that the City acquire by condemnation
16 all rights, title and interests in the Subject Water Facilities for public purpose and use,
17 for the purpose of being incorporated into the City's water service and delivery system,
18 future water resources and water service planning and development of the City and its
19 water system, and in order to provide current and future residents and businesses of the
20 City and others in the vicinity with water service by the City through its municipal
21 water system. This proceeding is brought to settle Plaintiff's right to acquire the
22 Subject Water Facilities through this action, to determine fair market value of the
23 Subject Water Facilities to be the total compensation to be paid by Plaintiff for the
24 taking of the Subject Water Facilities necessary for the stated public purpose, and to
25 determine what amounts of the total compensation are to be paid to which Defendants
26 or other claimants.

VII

Pursuant to A.R.S. §12-1117(2), Plaintiff alleges that it believes the following to be owners or claimants of the Subject Water Facilities sought to be acquired by this action, who accordingly are made Defendants herein:

RIGBY WATER COMPANY, an Arizona corporation, aka RIGBY WATER COMPANY, INC.;

HELEN G. RIGBY, a single woman and widow of WILLIAM FREEMAN RIGBY;

UNKNOWN HEIRS AND DEVISEES OF WILLIAM F. RIGBY;

SENAIDA BANUELOS, a single person;

The SPOUSE of OFELIA BANUELOS, if other than Senaida Banuelos on May 9, 1984;

TERESA CARRANZA;

ASA R. ANDREWS and IVA OPAL ANDREWS, husband and wife;

UNKNOWN HEIRS AND DEVISEES OF ASA R. ANDREWS or IVA OPAL ANDREWS, or both;

UNKNOWN SUCCESSORS IN INTEREST TO ASA R. ANDREWS and IVA OPAL ANDREWS as fee owners and lessors of the property described and all rights, obligations and privileges held under that certain Well-Site Agreement recorded in Docket 12931, Page 30, Maricopa County Recorder's Office;

ARTHUR C. TOBIN;

UNKNOWN HEIRS AND DEVISEES OF ARTHUR C. TOBIN;

UNKNOWN SUCCESSORS IN INTEREST TO ARTHUR C. TOBIN as fee owner and grantor of easement across the property described in that conveyance of easement recorded as Document No. 1996-0847690, Maricopa County Recorder's Office;

1 STATE OF ARIZONA by the ARIZONA DEPARTMENT OF REVENUE, as to
2 any unpaid taxes on centrally-valued utility property, under Title 42, Ch. 14;

3 COUNTY OF MARICOPA, as to any unpaid real property taxes;

4 PARTY(IES) IN POSSESSION OF AN UNRECORDED INTEREST;

5 UNKNOWN DEFENDANTS;

6 HEIRS AND DEVISEES OF THE ABOVE-NAMED DEFENDANTS, IF
7 DECEASED;

8 WHEREFORE, Plaintiff prays as follows:

9 1. That this Court enter a judgment in favor of Plaintiff, that the purpose for
10 the acquisition of the Subject Water Facilities sought to be acquired by this action is a
11 public use; and further adjudicating that the use to which the Subject Water Facilities
12 are to be put is a use authorized by law; and the acquisition of the property sought to be
13 acquired by this action is necessary to such use, as determined by the legislative body;

14 2. If subsequently applied for by the Plaintiff, for entry of an Interlocutory
15 Order of the Court permitting Plaintiff to take immediate possession of the Subject
16 Water Facilities, upon the deposit of money or a bond pursuant to A.R.S. §12-1116 in
17 an amount determined by the Court to be the probable damages for acquisition of the
18 subject property;

19 3. That the Court enter money judgments in favor of such Defendants as the
20 Court determines are entitled to compensation for said acquisition, in such amounts as
21 are determined by a jury or the Court, not to exceed the total compensation determined
22 by the Court;

23 4. That upon satisfaction by Plaintiff of such money judgments as are
24 awarded in favor of Defendants and against Plaintiff, the Court grant to Plaintiff a Final
25 Order of Condemnation conveying to Plaintiff the Subject Water Facilities and all
26 rights, title and interests in the subject water facilities sought to be acquired by this

1 action as provided by law, free and clear of all claims adjudicated or that could have
2 been adjudicated in this action;

3 5. For costs incurred by Plaintiff in this action.

4 DATED this 14th day of May, 2009.

6 GUST ROSENFELD P.L.C.

7
8 By 

9 David A. Pennartz
10 Andrew J. McGuire
11 Eric McGlothlin
12 201 E. Washington, Suite 800
13 Phoenix, AZ 85004-2327
14 (602) 257-7418 Telephone
15 (602) 340-1538 Facsimile
16 Attorneys for *City of Avondale*
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EXHIBIT A

**RIGBY WATER COMPANY
PARCELS 1 THROUGH 6**

PARCEL NO. 1 (Well site APN 500-68-008G):

The East 93 feet of the South 238 feet of the East 10 rods of the Southeast quarter of the Southeast quarter of Section 25, Township 1 North, Range 1 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the South 198 feet.

PARCEL NO. 2 (Portion APN 500-87-004A):

The South 38 feet of the West 30 feet of Lot 4, Sierra Estrella Ranchos, a subdivision recorded in Book 85 of Maps, Page 46, Maricopa County Recorder's Office, being situated in the S.E. Quarter of Section 26, Township 1 North, Range 1 West, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, except for an easement previously granted across the South 8 feet thereof;

TOGETHER WITH an Easement for water line across said Lot 4, Sierra Estrella Ranchos due North to Hidalgo Street; and

An easement for ingress and egress across said Lot 4, Sierra Estrella Ranchos to the above described leased property.

PARCEL NO. 3 (Portion APN 101-43-001):

An easement and privilege of placing, erecting, constructing, repairing, replacing, maintaining and using a single eight (8) inch water line across the following described property:

The Northeast quarter of the Southwest quarter of Section 30, Township 1 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, said easement being 12.0 feet in width, 6 feet on either side of the following described center line:

Commencing at the center of said Section 30;

Thence South 6.00 feet to the True Point of Beginning;

Thence West along a line 6.00 feet South of and parallel with the East-West midsection line, to a point 100 feet East of the West line, thence South 45 degrees West a distance of 31.11 feet to a point;

Thence West along a line 28.00 feet South of and parallel with the East-West midsection line, to the West line of said Northeast quarter of the Southwest quarter of said Section 30 and there terminating;

TOGETHER with the right of ingress and egress to permit operation and maintenance of said water line, all as created in instrument recorded in Document No. 96-0847690.

PARCEL NO. 4 (Well Site APN 101-43-009A):

Lot Three (3), Dix-Lee, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 75 of Maps, Page 6.

EXCEPT THE North 150 feet thereof.

PARCEL NO. 5 (Well Site APN 500-69-076):

Tract A, Holly Acres, according to Book 110 of Maps, Page 12, records of Maricopa County, Arizona.

PARCEL NO. 6 (Portion APN 101-43-009B):

An easement for Roadway over the West 20 feet of the North 150 feet of Lot 3, Dix-Lee, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 75 of Maps, Page 6.

City of Avondale v. Rigby Water Co.
Maricopa County Superior Court No. Cv2009-003060

SETTLEMENT AGREEMENT

ATTACHMENT C

1 **GUST ROSENFELD P.L.C.**

201 E. Washington, Suite 800

2 Phoenix, AZ 85004-2327

(602) 257-7422

3 David A. Pennartz – 006429

dpennartz@gustlaw.com

4 Andrew J. McGuire – 016653

amcguire@gustlaw.com

5 Eric McGlothlin – 026060

emcglathlin@gustlaw.com

7 **Attorneys for City of Avondale**

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

9 IN AND FOR THE COUNTY OF MARICOPA

10 CITY OF AVONDALE, an Arizona
municipal corporation,

11 Plaintiff,

12 vs.

13 RIGBY WATER COMPANY, an Arizona
14 corporation, aka RIGBY WATER
COMPANY, INC., *et al.*,

15 Defendants.

No. CV2009-003060

**RECEIPT AND PARTIAL
SATISFACTION OF JUDGMENT
(LUMP SUM PAYMENT)**

(Assigned to The Honorable Eileen
Willett)

17
18 Defendant Rigby Water Company (“Rigby” or “Defendant”), by and through its
19 attorneys undersigned, submit this Receipt and Partial Satisfaction of Judgment,
20 pursuant to the Settlement Agreement of the parties and the stipulation for entry of the
21 Final Judgment in Condemnation.

22 A. Rigby acknowledges that the Lump Sum Payment of TWO MILLION
23 FIVE HUNDRED SIXTY THOUSAND DOLLARS (\$2,560,000.00) called for in Sec.
24 2.4 of the Settlement Agreement and the Final Judgment in Condemnation has been paid
25 in full by the Plaintiff, City of Avondale.

26 B. The obligation to make contingent Future Payments, as specified in Sec.

1 2.5 of the Settlement Agreement, is not yet satisfied in full, as the Future Payment
2 Period has not yet expired.

3 C. As provided in the Settlement Agreement Sec. 2.4 and Sec. 2.5.5, filing of
4 this Receipt and Partial Satisfaction of the Final Judgment in Condemnation, by
5 payment of the Lump Sum Payment, shall be promptly followed by entry and recording
6 of the Final Order in Condemnation upon which ownership of the Subject Water
7 Facilities shall be vested in the City.

8 DATED this ____ day of _____, 20____.

9 **BRYAN CAVE LLP**

10
11 By _____
12 Steven A. Hirsch
13 Stanley B. Lutz
14 Two North Central, Suite 2200
15 Phoenix, AZ 85004
16 Attorneys for *Rigby Water Company*
17
18
19
20
21
22
23
24
25
26

1 COPY of the foregoing delivered
2 this ____ day of _____, 20____, to:
3 Hon. Eileen Willett
4 201 W. Jefferson, CCB-4B
5 Phoenix, AZ 85003
6 COPY of the foregoing mailed this
7 ____ day of _____, 20____, to:
8 Mary Cronin
9 Maricopa County Office of General Litigation Services
10 301 W. Jefferson, Suite 3200
11 Phoenix, AZ 85003
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City of Avondale v. Rigby Water Co.
Maricopa County Superior Court No. Cv2009-003060

SETTLEMENT AGREEMENT

ATTACHMENT D

MAIN EXTENSION AGREEMENT

WATER FACILITIES

This Agreement is entered into at Mesa, Arizona on this 1st day of October, 1998, by and between Terra Mobile Ranchettes Estates, hereinafter referred to as Applicant and Rigby Water Company, an Arizona corporation, hereinafter referred to as Utility.

- 1) Applicant is the owner of the property as set forth in Exhibit A, a copy of which is attached hereto and made a part hereof and hereinafter referred to as Property.
- 2) Applicant intends to develop said Property within the property set forth in Exhibit A and will require domestic water service.
- 3) Applicant and Utility agree that said property lies within the Certificate of Convenience and Necessity of Utility and therefore Utility is obligated to provide said domestic water service in accordance with the rules and regulations of the Arizona Corporation Commission (ACC)

AGREEMENT

NOW THEREFORE, in consideration of the terms and conditions set forth below, the parties hereto agree:

- 1) Applicant shall cause the proposed domestic water system to be designed, constructed or installed as necessary to provide an adequate supply of domestic water to each and every dwelling unit within the property as described in Exhibit A. Said water system shall include all necessary water facilities including but not limited to mains, fittings, fire hydrants, service lines, meter assemblies, meters, storage and pumping facilities.
- 2) Applicant shall be responsible for all costs associated with the construction of the domestic water system including engineering, permits, easements, labor, materials, equipment, transportation, insurance and bonds if applicable.
- 3) Applicants cost, as set forth in Exhibit B, a copy of which is attached hereto and made a part hereof, shall be subject to refund in accordance with the rules and regulations of the ACC and further described in Section 16 of this Agreement.

ORIGINAL

4) Applicant shall cause the domestic water system to be designed and constructed with sufficient capacity to serve the water needs of the Property, including fire protection.

5) Applicant may be required by Utility to provide "oversizing" in Applicants design and construction to benefit the needs of Utility. If oversizing is required by Utility, the Utility shall be obligated to pay those costs applicable to the oversized facilities. Said payment shall be based on material costs only and shall not include any costs for labor, equipment, transportation engineering, permits, disinfection, testing or any other costs not applicable in the sole discretion of Utility. Oversizing costs are set forth in Exhibit C, a copy of which is attached hereto and made a part hereof.

6) Applicant shall obtain all applicable permits, including zoning and other necessary permits which may be required prior to construction of the Domestic water system. All domestic water system facilities shall be constructed in accordance with the plans and specifications as prepared by Applicants engineer and reviewed by Utility's engineer and approved by Utility in writing. All domestic water system facilities shall be constructed in accordance with acceptable utility construction practices and in accordance with the rules and regulations of the ACC and the Arizona Department of Environmental Quality and the requirements of all other municipal and governmental agencies having jurisdiction.

7) Applicant shall comply with Utility's requirements for inspection and testing of the domestic water facilities constructed under this Agreement. Applicant shall provide Utility adequate notice when facilities under construction are ready for inspection and/or testing. Utility shall provide said inspection within five working days of being so noticed.

8) Utility shall provide Applicant written notice of any deficiencies discovered during said inspection within 10 working days of said inspection. Utility reserves the right to withhold acceptance of the facilities unless said facilities have been constructed in accordance with the requirements set forth herein.

9 Applicant herewith agrees to diligently pursue and promptly correct all deficiencies in construction, materials and workmanship as noted in Utilities written notice of deficiencies.

10) Applicant agrees to promptly correct all defects and deficiencies in construction, materials, and workmanship upon request by Utility and for one year following Utility's acceptance of the facilities at Applicants sole cost. It is understood that inspection and / or acceptance by Utility in no way relieves or limits Applicant of any responsibility and liability for construction and installation of the facilities in accordance with the terms of this Agreement.

11) The domestic water system facilities and all parts thereof, upon acceptance by Utility as provided herein, shall become and remain the sole property of utility without the requirements of any written document of transfer to Utility. However, Applicant shall furnish such documents pertaining to ownership and title as Utility may reasonably request to evidence or confirm transfer of possession and title to Utility free and clear of liens, or containing provision for satisfaction of lien claims by Applicant, acceptable to Utility. Applicant shall cause or cause to be repaired promptly, at no cost to Utility, all damage to the facilities caused by construction operations until all construction within the property is complete whether caused by Applicant or not.

12) Applicant shall convey or cause to be conveyed to Utility by Warranty Deed free and clear title to the land upon which any well and/or storage facility pertinent to the provision of domestic water is required. Any other lands applicable to and necessary for the provision of domestic water service as set forth on Applicants plans and specifications shall also be conveyed to Utility. Said lands are described on Exhibit C, a copy of which is attached hereto and made a part hereof.

13) Applicant shall, at no cost to Utility, grant or cause to be granted to Utility, perpetual right-of-ways and easements, in a form acceptable to Utility, for the facilities and future attachments to the facilities, including, but not limited to water mains, and access to the supply, production and storage sites. If any rights of way of easements are required by Utility for attachments to developments other than Applicants development, Utility and Applicant shall mutually agree on an acceptable location for such easements or rights of way.

14) Applicant shall, within 120 days following acceptance by Utility of facilities, furnish Utility with the following described original documents.

a) Copies of all invoices and billings and other statements of expenses incurred by Applicant for the construction of the domestic water system.

b) Releases and waivers from contractors, sub-contractors and vendors for materials, equipment, supplies, labor and other costs of construction of said facilities.

15) Utility will provide domestic water service to the Property in accordance with the rates, charges and conditions set forth in the tariffs of Utility as files with the ACC and in effect from time to time. It is agreed that water service to each and every dwelling unit within the Property will be metered accordingly. Applicant acknowledges and agrees that Utility has the right to and may in the future, connect the domestic water facilities to Utility's existing and/or future domestic water system.

16) The cost of construction and installation of facilities as evidenced by invoices furnished to Utility pursuant to Section 14 shall be advances in aid of construction subject to refund by Utility to Applicant. Utility shall make refunds annually to Applicant on or before August 31 for the preceding July 1 through June 30 period. The amount to be refunded annually shall be ten percent (10%) of the revenues (excluding sales taxes and all District, Municipal, County State or Federally imposed regulatory assessments) derived from the provision of metered domestic water service to the Property. Refunds shall be payable for a period of twenty (20) years from the date metered domestic water service is initiated to the Property. In no event shall the refunds paid to Applicant exceed the amount of the advanced in aid of construction. Any balance remaining at the end of the twenty year period shall become non-refundable. No interest shall be paid on any amount(s) advanced.

17) Applicant will furnish Utility with appropriate certificates of insurance, each containing a thirty (30) day notice of cancellation clause, stating collectively that Applicant or its contractors and subcontractors has the following insurance coverage during the period of construction hereunder.

a) Workman's Compensation Insurance in the amounts required by the laws of the state of Arizona.

b) Comprehensive General Liability Insurance including Products/Completed operations, with limits of not less than Two Million Dollars (2,000,000.00) combined single limit for bodily injury (including death) and property damage.

18) Applicant hereby assumes the full and entire responsibility and liability for any and all incidents of injury or death of any person, or loss or damage to any property contributed to or caused by the active or passive negligence of Applicant, its agents, servants, employees, contractors or subcontractors, arising out of or in connection with the construction of the domestic water facilities prior to Utility's acceptance as set forth herein. Accordingly, Applicant will indemnify and hold harmless Utility, its officers, directors, agents and employees from and against claims or expenses, including penalties and assessments, and attorneys' fees to which they or any of them may be subjected by reason of such injury, death, loss, claim, penalty assessment of damage, and in case any suit or other proceeding shall be brought on account thereof, Applicant will assume the defense at Applicants own expense and will pay all judgements rendered therein.

19) Applicant shall furnish Utility within sixty (60) days after completion of construction "As-Built" drawings certified as to correctness by an engineer registered in the State of Arizona showing the locations and respective sizes of all supply, transmission, production, storage, pumping facilities, and distribution facilities up to the curb valve of service connections to all dwelling units and/or structures served by the domestic water system.

20) Applicant shall cause any Department of Real Estate Subdivision reports issued regarding the Property, clearly to state that water services are to be provided by Utility and that Utility shall own all facilities utilized in providing said services, other than the service connections from the curb line into the dwelling unit premises.

21) The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall, nevertheless, be and remain in full force and effect.

22) Communications hereunder shall be sent to the respective parties, addressed as follows:

APPLICANT: Terra Mobile Ranchettes Estates
4439 W. Glendale Boulevard
Glendale, AZ 85301

UTILITY: Rigby Water Company
P.O. Box 2899
Gilbert, AZ 85299-2899

or to other such address as the parties may advise each other in writing.

23) It is agreed that Utility is not an agent of Applicant and shall not incur any costs or expenses on behalf of Applicant and that Applicant is not an agent of Utility and shall not incur any cost or expenses on behalf of Utility.

24) This Agreement shall be governed by the laws of the State of Arizona and shall be subject to the approval of the ACC and such other regulatory agencies as may be required under the laws of said State.

25) This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and assigns. However, neither Applicant nor Utility shall assign its rights, obligations and interest in this Agreement without the prior written consent of the other and such consent shall not be unreasonably withheld or delayed by either Applicant or Utility. Any attempted assignment without such consent shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the day and year first above written.

APPLICANT

Terra Mobile Ranchettes Estates Rigby Water Company

By: Charles Daines
Charles Daines-DAINS

UTILITY

By: Fred T. Wilkinson
Fred T. Wilkinson, President

By: Judy A. Lopez
Judy A. Lopez, Secretary,
Treasurer

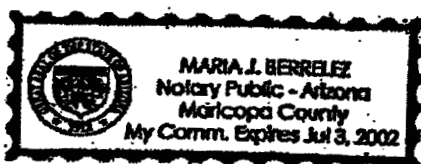
STATE OF ARIZONA)

County of Maricopa) SS

The foregoing instrument was acknowledged before me this March 2nd, 1999, by Charles DAINS known to me to be the _____ of _____, and authorized by said corporation to make this acknowledgement on its behalf.

By Maria J. Berrelez
Notary Public

My Commission Expires _____



STATE OF ARIZONA

County of Maricopa

} ss

The foregoing instrument was acknowledged before me this
5th day of May, 1999, by Fred J. Wilkinson
known to me to be the President of Rialto
Water Company, and authorized by said corporation to
make this acknowledgement on its behalf.

By

Judy A. Lopez
Notary Public

My Commission Expires

6/28/02



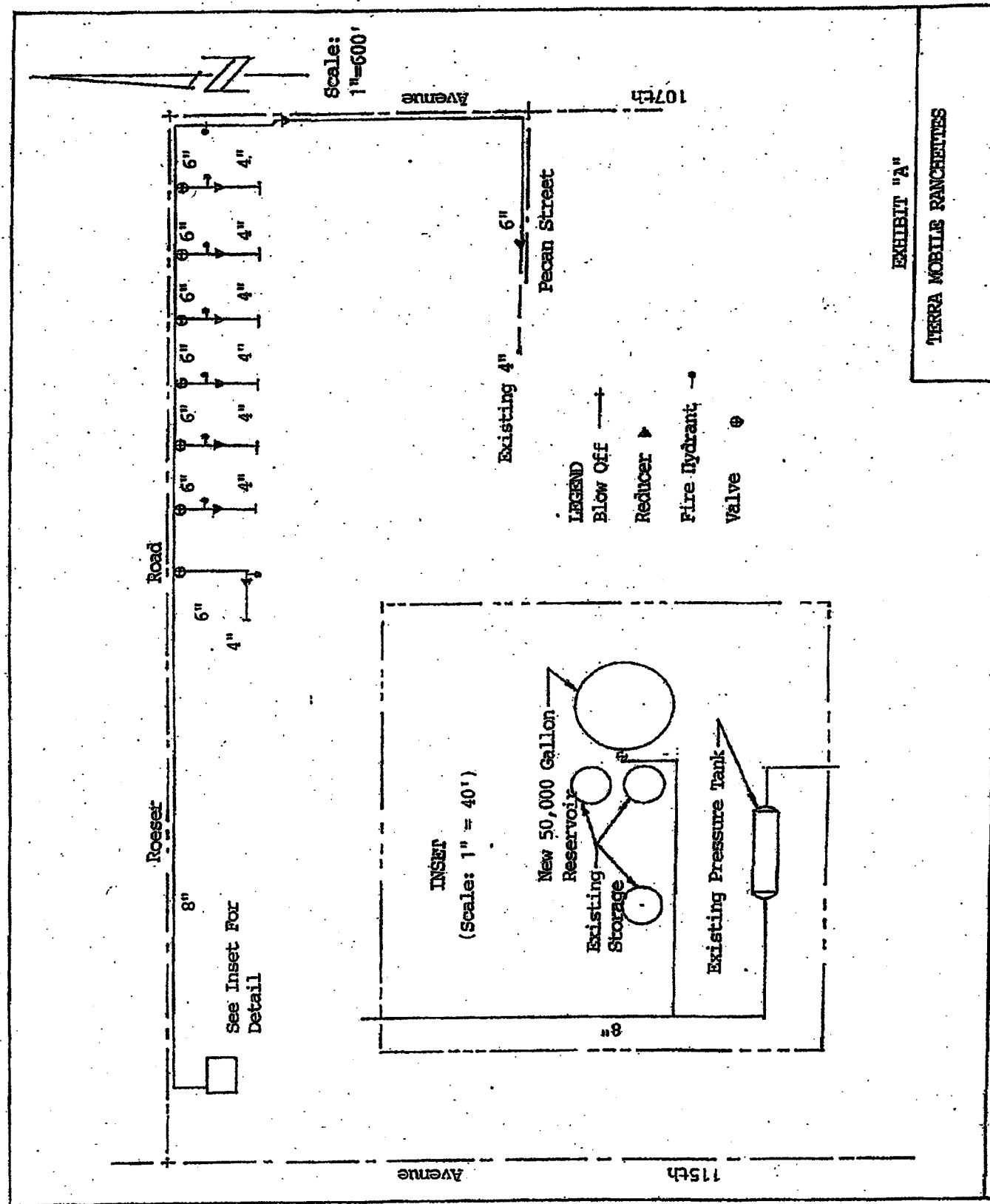


EXHIBIT "A"

TERRA MOBILE RANCHETTES

MEC No: RWC-002

Date February 18, 1999

Applicant: Terra Mobile Ranchettes Estates

TIERRA MOBILE RANCHETTES

EXHIBIT B

Distribution System:

5,440 L/F 8" C-900 P.V.C.	\$11.20	\$60,928.00
4,400 L/F 6" C-900 P.V.C.	\$9.00	\$39,600.00
1 only 6" 90 Bend	\$87.00	\$87.00
18 each 6" Gate Valve	\$580.00	\$10,440.00
1 only 8"x6" Reducer	\$140.00	\$140.00
2 each 8" 45 Bend	\$98.00	\$196.00
8 each 8"x6" Tee	\$220.00	\$1,760.00
8 each 6" Fire Hydrant	\$890.00	\$7,120.00
2 each 8" 90 Bend	\$105.00	\$210.00
4 each 8" Gate Valve	\$780.00	\$3,120.00
7 each 6"x6" tee	\$190.00	\$1,330.00
Sub-Total		<u>\$124,931.00</u>

Services:

83 each 1" Corp. Stops	\$52.00	\$4,316.00
83 each 1" Angle Meter Stops	\$48.00	\$3,984.00
83 each Meter Boxes	\$70.00	\$5,810.00
1 only 8" 22 1/2 Bend	\$158.00	\$158.00
Sub-Total		<u>\$14,268.00</u>

Reservoir:

1 only 50,000 gallon Tank	\$27,000.00	\$27,000.00
Clean up and testing costs	\$2,600.00	\$2,600.00
Sub-Total		<u>\$29,600.00</u>

Booster Pumps:	\$50,851.00	\$50,851.00
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Easement:

Art Tobin Easement	\$16,000.00	\$16,000.00
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Miscellaneous:

Bonds	\$672.00	\$672.00
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Permits	\$666.68	\$666.68
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Sub-Total		<u>\$1,338.68</u>
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SUMMARY:

Distribution System:	\$124,931.00
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Services:	\$14,268.00
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Reservoir:	\$29,600.00
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Booster Pumps:	\$50,851.00
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Easement:	\$16,000.00
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Miscellaneous:	<u>\$1,338.68</u>
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Total	\$236,988.68
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MEC No: RWC-002

Dated: February 18, 1999

Applicant: Terra Mobile Ranchettes Estates.

EXHIBIT C

OVERSIZING COSTS

No oversizing costs are required under this agreement.

City of Avondale v. Rigby Water Co.
Maricopa County Superior Court No. Cv2009-003060

SETTLEMENT AGREEMENT

ATTACHMENT E

RIGBY TAKEOVER ISSUES & INFORMATION/DOCUMENTATION NEEDS

Description of documents and information: The following descriptions of documentation or types of documentation are not necessarily exhaustive.

1. All as-builts and any other plans of the system.
 - a. Waterline sizes/locations, in-service dates.
 - b. Meter sizes, types, in-service dates.
 - c. Meter routes.
 - d. System repair records; i.e., where Rigby has replaced/repared lines, services, and other physical plant or system components, in-service dates.
 - e. Well plans, including drilling reports, O&M manuals, in-service dates.
 - f. Treatment system report, plans, O&M, component in-service dates.
 - g. Water production records, by facility, component in-service dates.
 - h. Water quality records, current and history.
 - i. Maintenance records for all equipment and major components, equipment and component in-service dates.
 - j. Records of any inspections and testing of waterlines, system, and components.
2. Billing records.
 - a. All current meter billing locations, including addresses, meter sizes, and similar or related information.
 - b. History of billing records, deposits, existing balances, payment records, logs and reports.
 - c. Any delinquent accounts.
 - d. Record of any electrical accounts needed for the system. History of these billings.
 - e. What are Rigby's rates, new connection fees, any other fees or charges?
3. Current management and maintenance agreements/contracts.
 - a. Any management, maintenance or utility operations contracts in place relating to the water system(s), operations, staffing, or other contractors. (As provided for in the Agreement, the City may want to keep the management contracts for a period of time after the Transfer Date on a full or partial basis.)
 - b. Information on full time and part time utilization of employees working on this system(s).
 - c. Any other contracts for the system(s) being acquired by the City, i.e., chlorine, nitrate treatment supplies, and similar or related information.
4. All records and documents concerning the real property owned by Rigby or in which Rigby holds an interest, and being acquired by the City.
 - a. Deeds and other title and related documents for all property and property interests being acquired by the City.
 - b. Any agreements currently in place regarding the real property and interests in real property being acquired by the City.
 - c. Any waterline easements, rights-of-way or other similar or related documents.

5. Other related issues.

- a. Any agreements or other formal relations with Rural Metro Fire or other fire protection agencies or entities.
- b. Any documents and information related to Blue Stake or other regional utility location/registration systems and the water system(s).

Exhibit

A-6

1 **COMMISSIONERS**

2 **GARY PIERCE, Chairman**

3 **BOB STUMP**

4 **SANDRA D. KENNEDY**

5 **PAUL NEWMAN**

6 **BRENDA BURNS**

7
8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9
10 IN THE MATTER OF THE APPLICATION
11 OF RIGBY WATER COMPANY FOR
12 APPROVAL OF TRANSFER OF ASSETS
13 AND CONDITIONAL CANCELLATION OF
14 ITS CERTIFICATE OF CONVENIENCE
15 AND NECESSITY

DOCKET NO. W-01808A-010-0390

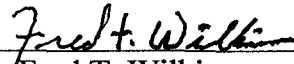
**DECLARATION OF FRED T.
WILKINSON**

16 I declare,

17 1. I am the President of Applicant Rigby Water Company. I make this
18 declaration in support of Rigby Water Company's Application for Approval of Transfer of
19 Assets and Conditional Cancellation of its Certificate of Convenience and Necessity, and as
20 directed by the Hearing Officer.

21 2. Under the terms of the Settlement Agreement between Rigby Water Company
22 and the City of Avondale, Rigby Water Company will retain all customer security deposits.
23 Upon transfer of Rigby Water Company's operations to the City of Avondale, Rigby Water
24 Company will refund the remaining security deposits to its customers or apply them to any
25 outstanding balances for service, as provided for in Commission rules.

26 Executed on April __, 2011 in Apache Junction, Arizona.

27
28 
Fred T. Wilkinson